vasectomy is a mild form of torture. The fact that there is a rational purpose behind it makes it doubtful, however, if it can be said to shock public feeling, which has sometimes been laid down as the test of cruel punishment.[16] Yet, in the case of those convicted of some of the crimes included in the Washington statute, the act authorizes the asexualization of persons against whom society is not in need of this protection.[17] As to them the punishment seems cruel, and the statute which imposes it unconstitutional. At all events, it is thoroughly objectionable, since it imposes as a penalty for certain classes of crime a treatment which is justified, if at all, only by the physical nature of certain criminals.

EFFECT OF RECEIVERSHIP OF LESSEE RAILROAD ON THE LEASE. — It frequently happens in this country that one public service company with legislative permission leases all of its property to a new company which assumes its debts and obligations, the lessor remaining in existence but no longer actively engaging in business. A peculiar situation arises in such a case when the lessee railroad or street railway goes into the hands of a receiver.[1] A reasonable time to determine the desirability of continuing a lease is granted to a receiver as essential to the proper performance of his functions.[2] And since he cannot split up the lease, his decision relates back to his appointment. If he reject the lease, the lessor has a provable claim against the estate for the stipulated rental accruing during the trial period.[3] Or the lessor may, at his option, charge the receiver with the reasonable rental value of the property for that time upon quasi-contractual principles.[4] This must mean that the lessor

[16] See COOLEY, CONSTITUTIONAL LIMITATIONS, 473; State *v.* Becker, 3 S. D. 29, 41. Furthermore, the apparent theory of the statute that the crime of which the defendant was convicted is strong evidence of his degenerate character seems reasonable, although it has been asserted that such crimes are mainly due to the effect of civilization. See LOMBROSO, CRIME: ITS CAUSES AND REMEDIES, 256.

[17] The act authorizes the sterilization of habitual criminals. WASH., REM. & BAL. CODE, § 2287. Habitual criminals include those who have been three times convicted of petit larceny. WASH. REM. & BAL. CODE, § 2286. Larceny is common among born criminals. See LOMBROSO, CRIME: ITS CAUSES AND REMEDIES, 154. Nevertheless, the fact that a man has been found guilty of three small thefts is insufficient evidence of his degeneracy. This objection is hardly lessened by the fact that the sterilization of such persons is discretionary with the court, since this discretion may be exercised arbitrarily.

[1] It is now settled that courts of equity may appoint receivers to administer the affairs of insolvent public service corporations in the absence of objection by the corporation, although it may amount to corporate dissolution without the aid of statute. Horn *v.* Pere Marquette R. Co., 151 Fed. 626; *Re* Metropolitan Railway Receivership, 208 U. S. 90, 28 Sup. Ct. 219.

[2] Platt *v.* Philadelphia & Reading R. Co., 84 Fed. 535; Dayton Hydraulic Co. *v.* Felsenthall, 116 Fed. 961; Quincy, Missouri & Pacific R. Co. *v.* Humphreys, 145 U. S. 82, 12 Sup. Ct. 787. It is only necessary for most of the decisions, however, to hold that possession for a reasonable time by the receiver is not an adoption of the lease.

[3] Pennsylvania Steel Co. *v.* New York City Ry. Co., "The Second Avenue Bondholders' Appeal," C. C. A., Second Circ., 1912.

[4] Stoepel *v.* Union Trust Co., 121 Mich. 281, 80 N. W. 13; Carswell *v.* Farmers' Loan & Trust Co., 74 Fed. 88; St. Joseph and St. L. R. Co. *v.* Humphreys, 145 U. S. 105, 12 Sup. Ct. 795. In some jurisdictions the receiver may be held for the stipulated rental during his occupancy. Nelson *v.* Kalkhoff, 60 Minn. 305, 62 N. W. 335; Charlotte, C. & A. R. Co. *v.* Chester & L. N. G. R. Co., 118 N. C. 1078, 24 S. E. 769.

may treat the lease, after the receiver's renunciation, as surrendered from the time of the receiver's appointment.[5] For if the term had remained vested in the lessee, the lessor could not recover from the receiver in quasi-contract, since it would have been the lessee's property that was used. Now ordinarily the appointment of a receiver does not determine the lease,[6] nor render it liable to forfeiture without an express stipulation.[7] The receiver may elect to adopt the lease, becoming liable as assignee,[8] or he may reject it, when in an ordinary lease the term remains vested in the insolvent lessee.[9] The peculiar right of the lessor to insist on forfeiture in this case must be based upon the duty owed the public that the road be operated. The lessor is not absolved from this duty by the lease.[10] The receiver has refused to operate and the lessee is disabled. So public necessity demands that the lessor be allowed to take back his property.

The necessity for determining the exact status of the lease during the receiver's trial period arose in a recent case where the operation of the road was at a loss. Clearly the lessor could not recover from the receiver for the use of the road, since there is no basis in quasi-contract.[11] But the court went further and held that the receiver could charge the loss to the lessor. *Pennsylvania Steel Co.* v. *New York City Ry. Co.*, "*Termination of Lease Proceeding*," C. C. A., Second Circ., 1912. If the lessor demand back the road but the trial period is insisted upon, he should not be liable, since he has no control over the operation.[12] The theory of the principal case is that the lessor's failure to demand back the road amounts to consent to its operation by the receiver in his behalf. Although the disuse of the road is very detrimental to its owner, his failure to act indicates no actual consent which can be implied in fact, since after the lease the lessor is usually not in a position to assume operation of the road. And since the receivership comes about through no fault of his, he should not have the burden of acting.[13] In several parts of the law, services rendered unofficiously in expectation of charging the recipient are held entitled to compensation, on the basis of a consent implied in law.[14] In the principal case there is the added reason that the lessor owes the public duty to operate the road and no one but

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[5] Since there is a provision in most leases allowing forfeiture for either insolvency or default in payment of rent, it is usually not necessary to imply this right in law.

[6] Chemical National Bank *v.* Hartford Deposit Co., 161 U. S. 1, 16 Sup. Ct. 439. *Cf.* Rodick *v.* Bunker, 84 Me. 441, 24 Atl. 897; *In re* Pennewell, 119 Fed. 139. But *cf. In re* Jefferson, 93 Fed. 948.

[7] *Cf.* 1 TIFFANY, LANDLORD AND TENANT, 94.

[8] Spencer *v.* World's Columbian Exposition, 163 Ill. 117, 45 N. E. 250.

[9] Chemical National Bank *v.* Hartford Deposit Co., *supra.*

[10] A. Backus, Jr., & Sons *v.* Detroit, W. T. & J. Ry., 71 Mich. 645, 40 N. W. 60; Ryerson *v.* Morris Canal & Banking Co., 71 N. J. L. 381, 59 Atl. 29; Chicago & N. W. R. Co. *v.* Crane, 113 U. S. 424, 5 Sup. Ct. 578.

[11] Park *v.* New York, L. E. & W. R. Co., 57 Fed. 799.

[12] If he have no right to demand back the road, the reason for absolving him is stronger.

[13] *Cf.* WILLISTON, SALES, § 662.

[14] KEENER, QUASI-CONTRACTS, c. vii. An analogy is found in the rule that finders are entitled to reasonable compensation. Reeder *v.* Anderson's Administrators, 4 Dana (Ky.) 193; Chase *v.* Corcoran, 106 Mass. 286. Another instance is the law of salvage. Another, the law of general average.

the receiver is in a position to fulfil that duty. But the question in the principal case is between the lessor and the lessee. The lessee also owes this public duty,[15] and as the lease is necessarily made with public authority[16] and the lessee assumes the obligation, his liability is primary. The receiver is appointed and operates on behalf of the lessee estate and the benefit to the lessor is incidental. Consequently, it is difficult to find a basis for the lessor's responsibility to the receiver.[17]

COMPARISON OF HANDWRITING. — The phrase "similitude" or "comparison of hands" was employed by the early judges to express their aversion for all handwriting testimony which involved a comparison between one piece of writing and another.[1] To the peculiar reverence manifested by later judges for this phrase must be traced the technical rules which obtained at common law wherever this sort of evidence was involved.[2] Where the comparison is made by the jury the lack of necessity for any such rules is clear, for the genuine writing offered in evidence[3] for comparison with the disputed writing differs on principle in no respect from ordinary circumstantial evidence. Yet in England it required a statute[4] definitely to settle the permissibility of such comparison, and in many American jurisdictions such comparison was either entirely forbidden or permitted only under various restrictions.[5]

The opinion of a witness as to the genuineness of a disputed writing in court, after comparison, should be admitted in the discretion of the court, which in all cases of opinion evidence should be extensive, if there

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[15] 1 ELLIOTT, RAILROADS, 2 ed., § 458. [16] *Ibid.* §§ 429, 430.

[17] *Cf.* Phinizy *v.* Augusta & Knoxville R. Co., 62 Fed. 771. See Brown *v.* Toledo, P. & W. R. Co., 35 Fed. 444, 445. But see Mercantile Trust Co. *v.* Farmers' Loan & Trust Co., 81 Fed. 254, 258. The broad ground discussed is not necessary to the decision in the principal case since there the intervening of the lessor gave assent to the receivership, and since the deficit was not caused by simply operating the road but by payments to protect the lessor's franchises. Moreover, the question might well be different if the lessee had no assets and the creditors of the receiver during the trial period were seeking to charge the lessor for their services in enabling the discharge of his public duty.

[1] For illustrations see Trial of Sir Richard Grahme, 12 How. St. Tr. 646, 735; King *v.* Crosby, 12 Mod. 72.

[2] Testimony by witnesses directly to the act of writing the words in dispute, and direct testimony to circumstances leading up or pointing back to that act, are merely ordinary illustrations of testimony from knowledge and involve no considerations peculiar to handwriting evidence.

[3] The theoretical objection to the introduction of all handwriting as a basis for comparison on the ground that, the question of genuineness being for the jury, it will tend to complicate the issues, is clearly untenable, since the genuineness of the document, like all preliminary questions of fact regarding the admissibility of evidence, should be determined as a preliminary matter by the court.

[4] 17 & 18 VICT. c. 125, § 27. This statute has been adopted in many American jurisdictions, frequently verbatim. Scotland and Ireland were excepted from the operation of this statute; but the same law was soon extended to Ireland. 19 & 20 VICT. c. 102, § 30.

[5] The reason for the great divergence in the American decisions is probably to be found in the fact that each jurisdiction, as it adopted a rule on the subject, tended to follow the prevailing English view, which went through several transformations. For the present state of the law in the various jurisdictions, see 3 WIGMORE, EVIDENCE, § 2016.